



# House of Representatives

General Assembly

**File No. 116**

*January Session, 2007*

Substitute House Bill No. 7053

*House of Representatives, March 22, 2007*

The Committee on Insurance and Real Estate reported through REP. O'CONNOR of the 35th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

## ***AN ACT CONCERNING DRAM SHOP LIABILITY.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subsection (b) of section 30-39 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2007*):

4 (b) (1) Any person desiring a liquor permit or a renewal of such a  
5 permit shall make a sworn application therefor to the Department of  
6 Consumer Protection upon forms to be furnished by the department,  
7 showing the name and address of the applicant and of the applicant's  
8 backer, if any, the location of the club or place of business which is to  
9 be operated under such permit and a financial statement setting forth  
10 all elements and details of any business transactions connected with  
11 the application. Such application shall include a detailed description of  
12 the type of live entertainment that is to be provided. A club or place of  
13 business shall be exempt from providing such detailed description if  
14 the club or place of business (A) was issued a liquor permit prior to

15 October 1, 1993, and (B) has not altered the type of entertainment  
16 provided. The application shall also indicate any crimes of which the  
17 applicant or the applicant's backer may have been convicted.  
18 Applicants shall submit documents sufficient to establish that state and  
19 local building, fire and zoning requirements and local ordinances  
20 concerning hours and days of sale will be met, except that local  
21 building and zoning requirements and local ordinances concerning  
22 hours and days of sale shall not apply to any class of airport permit.  
23 The State Fire Marshal or the marshal's certified designee shall be  
24 responsible for approving compliance with the State Fire Code at  
25 Bradley International Airport. Any person desiring a permit provided  
26 for in section 30-33b shall file a copy of such person's license from the  
27 Division of Special Revenue or the Gaming Policy Board with such  
28 application. The department may, at its discretion, conduct an  
29 investigation to determine whether a permit shall be issued to an  
30 applicant.

31 (2) (A) On and after July 1, 2007, the department shall not issue,  
32 continue or renew a liquor permit for any person subject to liability  
33 under section 30-102, as amended by this act, until such person  
34 submits proof of financial responsibility sufficient to satisfy any claim  
35 for damages in the amount of liability imposed by section 30-102, as  
36 amended by this act. Such proof of financial responsibility may be  
37 evidenced by (i) a bond of a surety company or a bond with an  
38 individual surety who owns real estate, which bond shall be  
39 conditioned on the payment of such amounts and shall not be  
40 cancellable except after ten days' written notice to the department, or  
41 which bond shall constitute a lien in favor of the state upon the named  
42 real estate of such surety, which lien shall exist in favor of any holder  
43 of a judgment on account of liability imposed by section 30-102, as  
44 amended by this act; (ii) submitting to the department the receipt for a  
45 deposit made with the State Treasurer of a sum of money or collateral  
46 in the amount of liability imposed by section 30-102, as amended by  
47 this act, for which the State Treasurer shall issue said receipt and, if  
48 such deposit is a sum of money, the state shall pay interest on said sum  
49 if so directed by the Secretary of the Office of Policy and Management

50 at a rate not greater than the amount received by the state, provided  
51 the State Treasurer may deposit any such money in a bank, as defined  
52 in section 36a-2, that is located in this state; or (iii) an insurance  
53 contract. If an insurance producer certifies that such person is insured  
54 by an insurance company for whom the producer is authorized to  
55 solicit, negotiate or effect contracts of insurance, such insurance  
56 company shall notify the department of the cancellation or termination  
57 of the policy not later than ten days prior to the effective date of such  
58 cancellation or termination, except that such notice shall not be  
59 required if the policy is renewed by such company or a replacement  
60 policy is issued with no lapse in dates of coverage. The department  
61 may require additional evidence of financial responsibility at any time.  
62 The requirements of this subdivision shall not apply to a nonprofit  
63 organization or to an establishment where liquor is sold for  
64 consumption off-premises. For purposes of this subdivision, "nonprofit  
65 organization" includes, but is not limited to, a charitable organization,  
66 as defined in section 30-1, a nonprofit public television corporation  
67 pursuant to section 30-37d, a nonprofit service club pursuant to section  
68 30-24a, a nonprofit theater pursuant to section 30-35a, a nonprofit  
69 public museum pursuant to section 30-37a, a nonprofit golf  
70 tournament pursuant to section 30-37g and a nonprofit corporation  
71 pursuant to section 30-37h; and "establishment where liquor is sold for  
72 consumption off-premises" includes, but is not limited to, a person  
73 who holds a permit issued pursuant to sections 30-14a to 30-20,  
74 inclusive, provided such permit does not allow the retail sale of  
75 alcoholic liquor to be consumed on the premises of such person.

76 (B) If a person fails to furnish required proof of financial  
77 responsibility, the department shall, until such proof is furnished,  
78 refuse to grant or renew the permit or may suspend or revoke such  
79 permit. Such proof of financial responsibility shall be furnished in such  
80 manner as the department prescribes pursuant to regulations adopted  
81 in accordance with the provisions of chapter 54.

82 [(2)] (3) The applicant shall pay to the department a nonrefundable  
83 application fee, which fee shall be in addition to the fees prescribed in

84 this chapter for the permit sought. An application fee shall not be  
85 charged for an application to renew a permit. The application fee shall  
86 be in the amount of ten dollars for the filing of each application for a  
87 permit by a charitable organization, including a nonprofit public  
88 television corporation, a nonprofit golf tournament permit, a  
89 temporary permit or a special club permit; and for all other permits in  
90 the amount of one hundred dollars for the filing of an initial  
91 application. Any permit issued shall be valid only for the purposes and  
92 activities described in the application.

93     ~~[(3)]~~ (4) The applicant, immediately after filing an application, shall  
94 give notice thereof, with the name and residence of the permittee, the  
95 type of permit applied for and the location of the place of business for  
96 which such permit is to be issued and the type of live entertainment to  
97 be provided, all in a form prescribed by the department, by publishing  
98 the same in a newspaper having a circulation in the town in which the  
99 place of business to be operated under such permit is to be located, at  
100 least once a week for two successive weeks, the first publication to be  
101 not more than seven days after the filing date of the application and  
102 the last publication not more than fourteen days after the filing date of  
103 the application. The applicant shall affix, and maintain in a legible  
104 condition upon the outer door of the building wherein such place of  
105 business is to be located and clearly visible from the public highway,  
106 the placard provided by the department, not later than the day  
107 following the receipt of the placard by the applicant. If such outer door  
108 of such premises is so far from the public highway that such placard is  
109 not clearly visible as provided, the department shall direct a suitable  
110 method to notify the public of such application. When an application is  
111 filed for any type of permit for a building that has not been  
112 constructed, such applicant shall erect and maintain in a legible  
113 condition a sign not less than six feet by four feet upon the site where  
114 such place of business is to be located, instead of such placard upon  
115 the outer door of the building. The sign shall set forth the type of  
116 permit applied for and the name of the proposed permittee, shall be  
117 clearly visible from the public highway and shall be so erected not  
118 later than the day following the receipt of the placard. Such applicant

119 shall make a return to the department, under oath, of compliance with  
120 the foregoing requirements, in such form as the department may  
121 determine, but the department may require any additional proof of  
122 such compliance. Upon receipt of evidence of such compliance, the  
123 department may hold a hearing as to the suitability of the proposed  
124 location. The provisions of this subdivision shall not apply to  
125 applications for airline permits, charitable organization permits,  
126 temporary permits, special club permits, concession permits, military  
127 permits, railroad permits, boat permits, warehouse permits, brokers'  
128 permits, out-of-state shippers' permits for alcoholic liquor and out-of-  
129 state shippers' permits for beer, coliseum permits, coliseum concession  
130 permits, special sporting facility restaurant permits, special sporting  
131 facility employee recreational permits, special sporting facility guest  
132 permits, special sporting facility concession permits, special sporting  
133 facility bar permits, nonprofit golf tournament permits, nonprofit  
134 public television permits and renewals. The provisions of this  
135 subdivision regarding publication and placard display shall also be  
136 required of any applicant who seeks to amend the type of  
137 entertainment upon filing of a renewal application.

138     ~~[(4)]~~ (5) In any case in which a permit has been issued to a  
139 partnership, if one or more of the partners dies or retires, the  
140 remaining partner or partners need not file a new application for the  
141 unexpired portion of the current permit, and no additional fee for such  
142 unexpired portion shall be required. Notice of any such change shall  
143 be given to the department and the permit shall be endorsed to show  
144 correct ownership. When any partnership changes by reason of the  
145 addition of one or more persons, a new application with new fees shall  
146 be required.

147     Sec. 2. Section 30-102 of the general statutes is repealed and the  
148 following is substituted in lieu thereof (*Effective October 1, 2007*):

149     If any person, by such person or such person's agent, sells any  
150 alcoholic liquor to [an] a visibly intoxicated person, and such  
151 purchaser, in consequence of such intoxication, thereafter injures the

152 person or property of another, such seller shall pay just damages to the  
153 person injured, up to the amount of two hundred fifty thousand  
154 dollars, or to persons injured in consequence of such intoxication up to  
155 an aggregate amount of two hundred fifty thousand dollars, to be  
156 recovered in an action under this section, provided the aggrieved  
157 person or persons shall give written notice to such seller within one  
158 hundred twenty days of the occurrence of such injury to person or  
159 property of such person's or persons' intention to bring an action  
160 under this section. Such notice shall specify the time, the date and the  
161 person to whom such sale was made, the name and address of the  
162 person injured or whose property was damaged, and the time, date  
163 and place where the injury to person or property occurred. No action  
164 under the provisions of this section shall be brought but within one  
165 year from the date of the act or omission complained of. Such injured  
166 person shall have no cause of action against such seller for negligence  
167 in the sale of alcoholic liquor to a person twenty-one years of age or  
168 older.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>July 1, 2007</i>	30-39(b)
Sec. 2	<i>October 1, 2007</i>	30-102

**INS**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

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**OFA Fiscal Note****State Impact:**

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Consumer Protection, Dept.	GF - Cost	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

This bill could result in a cost for additional staff resources in the Liquor Control and Legal Divisions of the Department of Consumer Protection (DCP) to handle proof of insurance by the permittees and related correspondence and hearings. There are currently about 4,000 current liquor permittees who would need to provide proof of insurance to DCP under the bill.

Although the extent of any workload increase is unknown, a projected 10% noncompliance rate could require the need for additional staff, at a cost of approximately \$281,000 annually.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

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**OLR Bill Analysis****sHB 7053*****AN ACT CONCERNING DRAM SHOP LIABILITY*****SUMMARY:**

The Dram Shop Act makes a liquor seller liable if he or his employee sells liquor to an already-intoxicated person who because of his intoxication subsequently injures a person or damages property. This bill limits this liability to sales to a person who is visibly intoxicated.

The bill prohibits the Department of Consumer Protection (DCP) from issuing, continuing, or renewing a liquor permit for any person subject to dram shop liability until he submits proof of financial responsibility sufficient to satisfy any claim for damages in the amount of liability the law requires (currently up to \$250,000 per person and per occurrence). The proof must be furnished in the manner the department prescribes in regulations it adopts. The bill requires DCP to suspend or revoke any permit until proof is furnished.

Under the bill, proof of financial responsibility may be shown by a surety bond, a bond with individual surety by someone who owns real estate, a deposit of money or collateral with the state treasurer, or an insurance policy.

The bill exempts people applying for or holding permits that do not allow the retail sale of alcoholic liquor for consumption on their premises. It also exempts nonprofit organizations including charitable organizations; nonprofit public television corporations; nonprofit theatres; public museums; nonprofit golf tournaments; nonprofit corporations applying for certain temporary permits; and under certain circumstances, nonprofit service clubs.



EFFECTIVE DATE: July 1, 2007, except for the section requiring that the customer be visibly intoxicated which becomes effective October 1, 2007.

## **PROOF OF FINANCIAL RESPONSIBILITY**

### ***Surety***

The bill specifies that the bond may be from a surety company or an individual surety who owns real estate. The bond must be conditioned on the payment of the amount of liability required by the dram shop law (currently \$250,000 per person and per occasion). The surety bond cannot be cancellable except after 10 days written notice to the DCP. The individual surety bond must constitute a lien in favor of the state on the surety's named real estate and must exist in favor of any holder of a judgment on account of liability imposed by the Dram Shop Act (see Comment).

### ***Deposit with the State Treasurer***

Under the bill, a person subject to dram shop liability may deposit with the state treasurer a sum of money or collateral in the amount of liability the Dram Shop Act imposes. The state treasurer must issue a receipt, which the person must submit to DCP. If the deposit is a sum of money, the state must pay interest if the Office of Policy and Management secretary requires it and at a rate not greater than the amount the state receives. The bill allows the state treasurer to deposit the money in a Connecticut bank.

### ***Insurance Contract***

The permittee subject to the Dram Shop Act may also prove financial responsibility with an insurance policy. If an insurance producer certifies that the permittee is insured by an insurance company for whom the producer is authorized to solicit, negotiate, or effect insurance contracts, the insurance company must notify DCP of the cancellation or termination of the policy at least 10 days before the cancellation's or termination's effective date. But notice is not required if the company renews the policy or issues a replacement policy with no lapse in coverage dates.

The bill authorizes DCP to require additional evidence of financial responsibility at any time.

***Those Required to Prove Financial Responsibility***

The requirements for proving financial responsibility do not apply to a nonprofit organization or to an establishment where liquor is sold for consumption off-premises. The bill defines a “nonprofit organization” to include charitable organizations, nonprofit public television corporations, certain nonprofit service clubs, nonprofit theaters, nonprofit public museums, nonprofit golf tournaments, and nonprofit corporations all as defined by certain laws.

The bill explicitly exempts nonprofit service clubs that consume alcohol under a golf court club permit located in a “no-permit” town.

The bill specifies that an “establishment where liquor is sold for consumption off-premises” includes any permit that does not allow the retail sale of alcoholic liquor to be consumed on the permittee’s premises.

**BACKGROUND*****Dram Shop Act***

The Dram Shop Act does not require proof that the seller acted negligently. The maximum recoverable amount is \$250,000 for injuries to a single person and \$250,000 in aggregate for injuries to more than one person. The actual amount of liability in a particular case is determined in court. The act is an exclusive remedy unless the intoxicated person was under age 21 when he was sold the liquor. Thus, an injured person cannot sue a seller for negligence in selling alcohol to someone who is at least age 21 (CGS § 30-102).

***Surety***

Generally, a surety is a person or entity that agrees to be responsible for another person’s debt or obligation. A surety is most typically required when the ability of the primary obligor to perform its duties is in question, or when there is some public or private

interest that requires protection from the consequences of his inability to do so.

***Surety Bonds***

Surety bonds guarantee the performance or financial obligations of others. A surety bond company commits its assets to support the performance and financial obligations of the principal in exchange for a premium.

***Charitable Organizations***

The law defines a “charitable organization” as any nonprofit organization organized for charitable purposes to which has been issued a ruling by the Internal Revenue Service classifying it as an exempt organization under the federal tax code (CGS § 30-1(7)).

***Nonprofit Public Television Corporation Permit***

The law defines a “nonprofit public television corporation” as a television broadcasting corporation organized for nonprofit, literary, and educational purposes which has been issued a ruling by the Internal Revenue Service classifying it as an exempt organization under the tax code (CGS § 30-37d(b)).

The law authorizes a nonprofit public television corporation permit to allow the retail sale of beer and wine at auction, if the auction is held as part of a fundraising event to benefit the tax-exempt activities of the nonprofit public television corporation. Each permit allows the sale of wine at a single auction only. A maximum of three such permits may be issued to one nonprofit public television corporation in any calendar year (CGS § 30-37d(a)).

***Nonprofit Theatre Permit***

A “nonprofit theater” means an organization organized for nonprofit, charitable, literary, and educational purposes which has been issued a ruling by the Internal Revenue Service classifying it as an exempt organization under federal tax law, and which carries on a program of performing arts for the general public at a theater located

on its premises (CGS § 30-35a).

A nonprofit theater permit allows the retail sale of alcoholic liquor by a nonprofit theater to be consumed on its premises by patrons on any day on which a performance is given and 12 other days per year. The proceeds derived from such sales, except for reasonable operating costs, must be used in furtherance of the theatre's charitable, literary, and educational activities.

### ***Nonprofit Service Club***

The law allows nonprofit service clubs to consume alcohol on a golf country club's premises under a golf country club Permit in a "no-permit" town. A nonprofit service club includes the Kiwanis Club, Rotary Club, Exchange Club, Lions Club, volunteer fire department association, police benevolent association, and religious clubs (CGS § 30-24a).

### ***Nonprofit Public Museum Permit***

A "nonprofit public museum" is any public museum organized for nonprofit, charitable, literary, and educational purposes.

A nonprofit public museum permit allows the retail sale of alcoholic liquor by a nonprofit public museum only on land and in buildings that are subject to the care, custody, and control of its board of trustees to be consumed on its premises by its patrons on any day on which the museum is open to the general public. Proceeds derived from such sales, except for reasonable operating costs, shall be used in furtherance of the charitable, literary, and educational activities of such nonprofit public museum.

### ***Nonprofit Golf Tournament Permit***

A nonprofit golf tournament permit allows the retail sale of alcoholic liquor to be consumed on the premises of a golf country club at which a golf tournament sponsored by an organization that is exempt from taxation under the federal tax code is being conducted. It is issued for up to eight days. Only one permit may be issued in any calendar year, and it allows the operation of up to 25 consumer bars on

the grounds of a golf country club (CGS § 30-37g).

***Nonprofit Corporation Permit***

A nonprofit corporation permit allows the retail sale of wine at auction, if the auction is held as part of a fund-raising event to benefit its tax-exempt activities. Each permit allows the sale of wine at a single auction only. A maximum of one permit may be issued to each nonprofit corporation in any calendar year, unless it is a nonprofit public television corporation, which may be issued up to three a year (CGS §§ 30-37h and d).

**COMMENT*****Individual Surety***

The bill does not require that any notice of the surety bond lien involving real estate be filed on the land records of the town where the real estate is located nor does it specify when the lien attaches and what it has priority over. It also does not specify how or from whom a release is obtained.

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea 17 Nay 1 (03/06/2007)